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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**STAGECOACH GROUP PLC AND COACH USA, INC., ET AL.
— ACQUISITION OF CONTROL — TWIN AMERICA, LLC**

**APPLICANTS' RESPONSE TO COMMENT OF ONEL ALFARO
AND AMICUS CURIAE STATEMENT OF KAREN FLEMING**

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and Twin America, LLC*

May 20, 2011

Applicants submit this Response to the May 6, 2011 Comment of Onel Alfaro ("Alfaro Comment") and May 10, 2011 "Amicus Curiae Statement" by Karen Fleming ("Fleming Comment") (collectively "Comments").

Onel Alfaro, a disbarred New York attorney, *see In re Alfaro*, 293 A.D.2d 110, 741 N.Y.S.2d 450 (2d Dep't 2002), recently lost his tour guide job at Twin America. Specifically, the company terminated Mr. Alfaro for cause on April 12, 2011 after he physically attacked and assaulted another Twin America employee. Twin America maintains a zero tolerance policy for this behavior. Interestingly, Mr. Alfaro now reveals and credits himself as the source behind the New York Attorney General's investigation of the Twin America transaction.¹

Karen Fleming is the former president of Transport Workers' Union Local 225, which represents Gray Line tour guides, ticket sellers and dispatchers. The union's Executive Board removed Ms. Fleming from her office for cause on July 7, 2010. The Executive Board considered thirty-two charges that included submitting false information, making false accusations and conducting a personal vendetta against certain union employees, among other charges covering misappropriating union funds, consistently failing to adhere to union rules and protocol, professional misconduct and negligent performance of duties. After more than twelve

¹ Mr. Alfaro's "Comment" is very late. The evidentiary phase of this proceeding ended months ago. He offers no reason for not having submitted his views on the transaction by November 2, 2009, the time frame fixed by the Board for the submission of comments on the control Application filed by Applicants. Nor does he offer any excuse for his late reply to Applicants' February 28, 2011 Petition for Reconsideration. Under the Board's rules at 49 C.F.R. § 1104.13(a), replies were due twenty days after the Petition was filed, on March 21, 2011. Mr. Alfaro cannot claim that he was unaware of the transaction or the proceeding; his own comments make it clear that he was aware of the transaction as early as June 2009.

hours of deliberations that produced a 388-page stenographic record, the Executive Board found Ms. Fleming culpable of twenty-one separate offenses and dismissed her for cause from office.²

Neither union has any current objection to the Twin America transaction, and in fact both unions have indicated they now expressly assent to the transaction. Mr. Alfaro himself acknowledges the unions representing Twin America's employees maintain no objection to the merger. Alfaro Comment ¶ 7.

Instead, ousted by the Company on one hand for physical assault on a co-worker, and by the Union on the other hand for malfeasance in office, Mr. Alfaro and Ms. Fleming submit what appear to be coordinated comments under no permissible Board rules purporting to "represent the unrepresented." These Comments, motivated by personal bias and riddled with accusations unsupported by evidence, underscore the need for the Board's reconsideration. Simply put, any Board decision of this important matter should be based on evidence and information tested by procedural and evidentiary safeguards and due process of law.

Twin America has previously addressed many of the points carelessly cast by the new Commenters and few require any response beyond a clarification of the points Applicants have already submitted to the Board. The 2009 price increase cannot be evidence of market power absent appropriate economic analysis showing other prices in the marketplace and rising costs. Verified Statement of Robert Willig (Feb. 18, 2011) ¶¶ 9-10; Verified Statement of Robert Willig (Mar. 10, 2010) ¶¶ 29-37 ("2010 Willig V.S."). Twin America has, moreover, previously attested that CitySights independently decided to raise its prices contemporaneously with the

² Ms. Fleming likewise offers no excuse for the late filing of her "Amicus Curiae Statement," which the Board's rules do not even contemplate or allow. Ms. Fleming has previously submitted filings in this proceeding and was obviously well aware of the proceeding, rules and deadlines.

announcement of Gray Line's price increase in February 2009, before the Twin America transaction occurred. Verified Statement of Zev Marmurstein (Feb. 18, 2011) ¶ 18 ("2011 Marmurstein V.S."); Verified Statement of Zev Marmurstein (Mar. 10, 2010) ¶ 12 ("2010 Marmurstein V.S."); 2010 Willig V.S. ¶ 34. Its April 2009 execution of that decision post-transaction was not a result of it. 2011 Marmurstein V.S. ¶ 18; 2010 Marmurstein V.S. ¶ 12; 2010 Willig V.S. ¶ 34.

Twin America has also fully addressed the fact that the cornerstone of its operating efficiencies was its ability to use fewer buses for the same (and, in fact, increased) levels of service. Verified Statement of Ross Kinnear (Nov. 17, 2009) ¶ 8 ("2009 Kinnear V.S."); Verified Statement of Robert Willig (Nov. 17, 2009) ¶¶ 15-16; Verified Statement of Zev Marmurstein (Nov. 16, 2009) ¶ 14. Twin America has shown it has done just that, serving more passengers with more frequency and adding more tours, all with fewer buses on the streets. The Commenters' allegation that Twin America buses are unsafe is false and sanctionable: all buses must pass the Department of Transportation's required testing every six months. Equally outlandish is the Commenters' carefully phrased reference designed to imply Twin America buses are responsible for fatalities – which they are not. Likewise the assertion that Twin America has made no repairs to CitySights buses since the merger is a flat lie.

The separation of operations noted throughout the new Comments all relate to Twin America's obligations under two different collective bargaining agreements. Twin America has disclosed and described these operations and commitments throughout its submissions in this proceeding. *See* Applicants' Letter to Cynthia T. Brown (July 8, 2010); Applicants' Letter to Cynthia T. Brown (July 21, 2010); Applicants' Letter to Cynthia T. Brown (July 29, 2010).

At bottom, the Comments from a discharged employee and dislodged union officer present labor challenges where none exist:

- Mr. Alfaro's claim that Twin America is exercising "market power" over employees is an assertion of a union grievance that unions and represented employees have not made. Alfaro Comment ¶ 28. Equally telling, it is a personal grievance, clear from his reference to "arbitrary disciplinary measures," which Twin America presumes correlates to his termination for assault. *Id.*
- Ms. Fleming's claim that labor relations are "in shambles" is mystifying given the current union submissions in this matter, and Ms. Fleming's lack of involvement since the union's Executive Board removed her for cause ten months ago. Not surprisingly, the examples cited by Ms. Fleming are total fiction: CitySights drivers, tour guides and ticket sellers recently determined in a landslide vote to continue being represented by United Service Workers Union (International Union of Journeymen and Allied Trades) Local 1212, and both the Gray Line drivers represented by Teamsters Local 944 as well as the Gray Line dispatchers represented by Transport Workers' Union Local 225 recently voted overwhelmingly to accept new contracts negotiated with Twin America management.

These unsupported attacks fueled by personal disagreements (and potential dislike) of Twin America management and union leadership are not appropriate procedurally or substantively.

The Comments do contain references to one subject that requires further response: Twin America's integration and actions since the Board's decision. To be clear, the integration referenced in Twin America's comments, motions and verified statements occurred in 2009 and

2010. None of the integration referenced in Twin America's comments occurred after the Board's February 2011 decision, and Twin America has strictly respected and adhered to the Chairman's admonition in his March 9, 2011 decision granting the petition for stay that no further integration occur.³ The "liquidation" concern that the Commenters have raised, furthermore, is a bizarre phantom in fact and theory: Twin America cannot comply with the STB's order under review by liquidating CitySights, and Twin America has taken no steps to that end.

In sum, Twin America's prior submissions stand for themselves against the collective comments of Mr. Alfaro and Ms. Fleming. Notable, however, are passing references in the new Comments that further support Twin America's arguments to the Board. The new Comments, for example, indicate double-decker bus tours are part of an overall tourism industry in New York City that competes with public transportation. Alfaro Comment ¶ 13. Worth mentioning on this note, of the \$29 billion NYC tourism market attracting forty-nine million annual visitors the Commenters cite, Twin America double-decker tours over the past year would have represented approximately \$110 million and two million visitors, or 0.4% and 4.1% respectively.

Also interesting is the letter to employees from Twin America's CEO Mark Marmurstein at the time of the transaction, attached as Exhibit B by Mr. Alfaro. In that letter, contemporaneous with the merger and months before any investigation or challenge to the transaction, Mr. Marmurstein states: "Remember that we have to fight every other attraction in NYC for the Tourism dollar." Alfaro Comment Ex. B.

³ The allegation that Twin America plans to paint twelve CitySights buses red for use by the Gray Line brand is incorrect. These buses currently are red Gray Line buses that will be repainted pink for Gray Line's new Pink Bus Tour once licensing details are finalized. See 2011 Marmurstein V.S. ¶ 7.

Lastly, Mr. Alfaro's Comment further confirms that his complaints about the merger and any subsequent (or consequent) investigations arose *after* Twin America retained counsel to assess the requirement to file an Application for control with the STB. *See* 2009 Kinnear V.S. ¶¶ 2 & 22. As the Board has pointed out, it is regrettable that Twin America did not retain transportation counsel and file its Application before the merger occurred, but salient here is Twin America's retention of counsel well in advance of any challenges or investigations. Twin America's STB Application was never an attempt to avoid scrutiny by the NYAG. The Application was under preparation well before the NYAG launched its investigation. Twin America filed its Application with the STB once it was advised that the filing was mandatory, and it voluntarily and contemporaneously complied with the NYAG subpoenas immediately and throughout the pendency of the STB review.

In the absence of even an assertion of good cause to accept the untimely Comments, the Board should not do so. The Board's rules at 49 C.F.R. § 1104.6 provide that documents "must be received for filing at the Board's offices in Washington, DC within the time limits set for filing." *See Boston and Maine Corp.—Abandonment—In Hartford and New Haven Counties, CT; Springfield Terminal Railway Co.—Discontinuance of Service—In Hartford and New Haven Counties, CT*, STB Docket Nos. AB-32 (Sub-No. 83), AB-355 (Sub-No. 23), 1998 STB LEXIS 213, at *2-*3 (served Apr. 22, 1998) ("Our rules provide that we will reject any pleading filed after its due date 'unless good cause is shown why the pleading is filed late.' Protests were due on February 12, 1998. Dalton has not given a reason for the month-long delay in filing the information it now seeks to have considered. Having failed to demonstrate good cause for late-filing this information, we will deny Dalton's motion and reject the late-tendered supplemental

pleading.") (internal citations omitted). In the event that the Board does consider these filings, however, the Board should also accept this Response.

Respectfully submitted,

Dated: May 20, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2011, I served a true and accurate copy of the foregoing Applicants' Response to Comment of Onel Afaro and Amicus Curiae Statement of Karen Fleming via overnight delivery upon the following parties:

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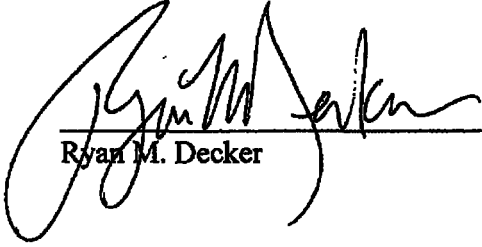
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